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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION**

COLE UNGER, and STEVEN  
 PRESCOTT, on behalf of themselves and  
 all others similarly situated,

Plaintiffs,

v.

THE WALT DISNEY COMPANY,

Defendant.

Case No. 5:25-cv-01163-EJD-VKD

Hon. Edward J. Davila

**NOTICE**

On June 6, 2025, Defendant Disney’s counsel informed the undersigned (“*Unger Counsel*”) that it had reached a settlement in principle during a mediation with plaintiffs’ counsel in the related action *Biddle v. Walt Disney Co.*, No. 5:22-cv-07317-EJD (N.D. Cal.) (“*Biddle counsel*”). To *Unger Counsel*’s surprise, they were told that the terms of the agreement purported to resolve all of the claims in both the *Biddle* action—on behalf of the DirectTV- and YouTube-subscriber classes—and this action, on behalf of a separate Fubo-subscriber class. Soon thereafter, the *Biddle* parties filed a joint notice with the Court informing it of the settlement in principle, as well as *Biddle counsel*’s intention to move for permission to act authoritatively for the Fubo class and to request a stay of both actions. ECF No. 147.

Plaintiffs—Fubo subscribers and class representatives (“*Unger Plaintiffs*”)—file this Notice for two reasons: (1) to inform the Court of the facts surrounding the putative settlement in

1 principle, and (2) to indicate the *Unger* Plaintiffs' intent to intervene in the *Biddle* case to protect  
2 their interests and those of the Fubo-subscriber class they represent.

3 To start, there is no settlement in principle with respect to the claims alleged by Plaintiffs  
4 and the proposed class (Fubo subscribers) in this case. Only *Unger* Counsel represent the *Unger*  
5 Plaintiffs. Yet *Unger* Counsel did not participate in the mediation, nor were they invited to  
6 participate or even told that it was happening. As a result, the *Unger* Plaintiffs were not  
7 represented at the mediation nor given any input into the terms of any settlement in principle.

8 As the Court is aware, the *Biddle* complaint does not allege any claims on behalf of a  
9 class of Fubo subscribers. As a result, *Biddle* counsel does not represent any Fubo-subscriber  
10 class or its interests. Nor does *Biddle* counsel represent the *Unger* Plaintiffs, who have filed this  
11 separate action on behalf of a Fubo-subscriber class. Thus, *Biddle* counsel does not have a  
12 fiduciary duty to act in the best interests of the Fubo class. Only *Unger* Counsel does. And there  
13 has been no determination by the Court otherwise.

14 Despite all of this, *Biddle* counsel unilaterally engaged in secret settlement negotiations  
15 purportedly on behalf of a Fubo-subscriber class that it does not represent and that it knows is  
16 ably represented by *Unger* Counsel. This conduct is not in the best interests of the Fubo-  
17 subscriber class, as was made evident by *Biddle* counsel's own statements to the Court at the  
18 May 15, 2025 hearing and summarized in detail by the *Unger* Plaintiffs' Brief Regarding Case  
19 Management Issues, filed on May 30, 2025. ECF No. 68. This opportunism should not be  
20 countenanced, especially given that the *Biddle* parties were on notice of potential conflicts in  
21 having the same counsel represent multiple classes in both cases. *Id.*

22 If Disney would like to resolve the *Unger* action, separately or in conjunction with the  
23 *Biddle* case, *Unger* Counsel welcomes the opportunity and is prepared to engage in such  
24 discussions.

25 In the interim, however, in order to protect their significant interests, *Unger* Plaintiffs will  
26 be moving to intervene in the *Biddle* case. This will allow the *Unger* Plaintiffs to respond to any  
27 motion that may interfere with their rights or those of the Fubo-subscriber class. Indeed, in its  
28

1 Notice to the Court, *Biddle* counsel has made clear that it intends to seek authority from the  
 2 Court under Federal Rule of Civil Procedure 23(g) to “seek preliminary approval on behalf of the  
 3 Fubo class members.” *Unger* Counsel will invariably seek to respond to this on both procedural  
 4 and legal/substantive grounds, as well as any motion to stay some or all of the *Unger*  
 5 proceedings, which *Biddle* counsel also suggests it will make.

6 Finally, if any settlement is executed in the *Biddle* action that infringes on or attempts to  
 7 resolve any of the claims in *Unger* or the rights of a Fubo-subscriber class, *Unger* Plaintiffs may  
 8 exercise their rights pursuant to Court-approved procedures to object to the settlement in whole  
 9 or in part if and when preliminary approval is granted.

10 *Unger* Counsel have provided a courtesy copy of this Notice to *Biddle* counsel.

11  
 12 Dated: June 9, 2025

Respectfully submitted,

13  
 14 /s/ Gregory Asciolla

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